

AN ACT

relating to the management of public school land and the permanent school fund.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Section 51.001(11), Natural Resources Code, is amended to read as follows:

(11) "Market value" has the meaning assigned by Section 1.04, Tax Code [~~means the value of real property determined by an appraisal performed by an appraiser~~].

SECTION 2. The heading to Subchapter B, Chapter 51, Natural Resources Code, is amended to read as follows:

SUBCHAPTER B. PROVISIONS GENERALLY APPLICABLE

TO THE MANAGEMENT [~~SALE AND LEASE~~]

OF PUBLIC SCHOOL AND ASYLUM LAND

SECTION 3. The heading to Section 51.011, Natural Resources Code, is amended to read as follows:

Sec. 51.011. MANAGEMENT [~~SALE AND LEASE~~] OF PUBLIC SCHOOL LAND.

SECTION 4. Section 51.011, Natural Resources Code, is amended by amending Subsection (a) and adding Subsections (a-1) and (a-2) to read as follows:

(a) Any land that is set apart to the permanent school fund under the constitution and laws of this state together with the mineral estate in riverbeds, channels, and the tidelands, including

1 islands, shall be subject to the sole and exclusive management and
2 control of [~~controlled, sold, and leased by~~] the school land board
3 and the commissioner under the provisions of this chapter and other
4 applicable law.

5 (a-1) The board may acquire, sell, lease, trade, improve, or
6 otherwise manage, control, or use land that is set apart to the
7 permanent school fund in any manner, at such prices, and under such
8 terms and conditions as the board finds to be in the best interest
9 of the fund.

10 (a-2) Not later than October 15 of each year, the board
11 shall report to the Legislative Budget Board the sale of any land
12 that is set apart to the permanent school fund for less than
13 appraised value or the purchase of any land that is set apart to the
14 permanent school fund for more than appraised value during the
15 preceding state fiscal year.

16 SECTION 5. Section 51.051, Natural Resources Code, is
17 amended to read as follows:

18 Sec. 51.051. SALE OF LAND. All [~~Subject to the provisions~~
19 ~~of Section 32.109 of this code, all~~] sales of land described in
20 Section 51.011 [~~of this code~~] shall be made by or under the
21 direction of the school land board [~~to the applicant who submits the~~
22 ~~highest bid for the land at a price that is not less than the price~~
23 ~~set by the board for purchase of the land~~].

24 SECTION 6. Section 51.052, Natural Resources Code, is
25 amended by amending Subsections (d), (e), and (i) and adding
26 Subsection (l) to read as follows:

27 (d) Before the land under this chapter is sold, the

1 appraiser must appraise the land at its market value and file a copy
2 of the appraisal with the commissioner. [~~No land covered by this~~
3 ~~chapter may be sold for less than the market value that appears in~~
4 ~~the appraisal made under this subsection.~~]

5 (e) The owner of land that surrounds land in a tract shall
6 have a preference right to purchase the tract before the land is
7 made available for sale to any other person, provided the person
8 having the preference right pays not less than the market value for
9 the land as determined by the board and the board finds use of the
10 preference to be in the best interest of the state. The board shall
11 adopt rules to implement this preference right.

12 (i) If no bid meeting minimum requirements is received for a
13 tract of land offered at a sealed bid sale under Subchapter D of
14 Chapter 32 [~~of this code~~], or if the transaction involves
15 commercial real estate and the board determines that it is in the
16 best interest of the permanent school fund, the asset management
17 division of the land office may solicit proposals or negotiate a
18 sale, exchange, or lease of the land to any person. The asset
19 management division may [~~also~~] contract for the services of a real
20 estate broker or of a private brokerage or real estate firm to
21 assist in a [the real estate] transaction under this subsection.
22 [~~The sale price may not be less than the market value.~~] The board
23 must approve any negotiated sale, exchange, or lease of any land
24 under this section.

25 (1) If the board leases land under this subchapter and the
26 lease includes the right to produce groundwater from the land, the
27 lessee shall comply with the statutory provisions governing and the

1 rules adopted by the groundwater conservation district, if any, in
2 which the land is located, including the statutory provisions and
3 rules governing the production and use of groundwater and the
4 transfer of groundwater out of the district.

5 SECTION 7. Sections 51.401(a) and (c), Natural Resources
6 Code, are amended to read as follows:

7 (a) The board may designate funds received from the sale of
8 permanent school fund land under this chapter and the proceeds of
9 future mineral leases and royalties generated from existing and
10 future [~~active~~] leases of permanent school fund mineral interests
11 received under Chapters 52 and 53 [~~of this code~~] for deposit in a
12 special fund account of the permanent school fund in the State
13 Treasury to be used by the board [~~to acquire fee or lesser interests~~
14 ~~in real property, including mineral and royalty interests, for the~~
15 ~~use and benefit of the permanent school fund,~~] as provided by
16 [~~Section 51.402 of~~] this subchapter.

17 (c) Money received from the sale of a particular piece of
18 land [~~and designated for the acquisition of interests in real~~
19 ~~property~~] under this subchapter must be used by the board as
20 provided by this subchapter not later than two years after the date
21 of the sale of land from which the money is derived. Money received
22 from the lease of minerals and royalties derived from [~~active~~]
23 leases and designated for use by the board as provided by [~~the~~
24 ~~acquisition of interests in real property under~~] this subchapter
25 must be used by the board not later than two years after the date the
26 money is deposited in the special fund account.

27 SECTION 8. Section 51.402, Natural Resources Code, is

1 amended to read as follows:

2 Sec. 51.402. USE OF DESIGNATED FUNDS [~~ACQUISITION OF~~
3 ~~INTEREST IN REAL PROPERTY~~]. (a) The board may use the money
4 designated under Section 51.401 [~~of this subchapter to acquire real~~
5 ~~property and to pay the expenses of acquisitions and sales~~] for any
6 of the following purposes:

7 (1) to add to a tract of public school land to form a
8 tract of sufficient size to be manageable;

9 (2) to add contiguous land to public school land;

10 (3) to acquire, as public school land, interests in
11 real property for [~~of unique~~] biological, commercial, geological,
12 cultural, or recreational purposes [~~value~~]; [~~or~~]

13 (4) to acquire mineral and royalty interests for the
14 use and benefit of the permanent school fund;

15 (5) to protect, maintain, or enhance the value of
16 public school land;

17 (6) to acquire interests in real estate; or

18 (7) to pay reasonable fees for professional services
19 related to a permanent school fund investment.

20 (b) Before using funds [~~acquiring real property~~] under
21 Subsection (a) [~~of this section~~], the board must determine, using
22 the prudent investor standard, that the use of the funds for the
23 intended purpose [~~acquisition~~] is in the best interest of the
24 permanent school fund.

25 (c) Notwithstanding Subsection (a), the market value of the
26 investments in real estate under this section on January 1 of each
27 even-numbered year may not exceed an amount that is equal to 15

1 percent of the market value of the permanent school fund on that
2 date.

3 SECTION 9. Subchapter I, Chapter 51, Natural Resources
4 Code, is amended by adding Sections 51.4021 and 51.408-51.412 to
5 read as follows:

6 Sec. 51.4021. APPOINTMENT OF SPECIAL FUND MANAGERS. (a)
7 The board may appoint investment managers to invest the money
8 designated under Section 51.401 by contracting for professional
9 investment management services with one or more organizations that
10 are in the business of managing real estate investments.

11 (b) To be eligible for appointment under this section, an
12 investment manager must be:

13 (1) registered under the Investment Advisers Act of
14 1940 (15 U.S.C. Section 80b-1 et seq.);

15 (2) a bank as defined by that Act; or

16 (3) an insurance company qualified to perform real
17 estate investment services under the laws of more than one state.

18 (c) In a contract under this section, the board shall
19 specify any policies, requirements, or restrictions, including
20 ethical standards and disclosure policies and criteria for
21 determining the quality of investments and for the use of standard
22 rating services, that the board adopts for real estate investments
23 of the permanent school fund. Money designated under Section
24 51.401 may not be invested in a real estate investment trust, as
25 defined by Section 200.001, Business Organizations Code.

26 (d) Compensation paid to an investment manager by the board
27 must be consistent with the compensation standards of the

1 investment industry and compensation paid by similarly situated
2 institutional investors.

3 (e) Chapter 2263, Government Code, applies to investment
4 managers appointed under this section. The board by rule shall
5 adopt standards of conduct for investment managers appointed under
6 this section as required by Section 2263.004, Government Code, and
7 shall implement the disclosure requirements of Section 2263.005 of
8 that code.

9 Sec. 51.408. ETHICS POLICY AND TRAINING. (a) In addition
10 to any other requirements provided by law, the board shall adopt and
11 enforce an ethics policy that provides standards of conduct
12 relating to the management and investment of the funds designated
13 under Section 51.401. The ethics policy must include provisions
14 that address the following issues as they apply to the management
15 and investment of the funds and to persons responsible for managing
16 and investing the funds:

- 17 (1) general ethical standards;
18 (2) conflicts of interest;
19 (3) prohibited transactions and interests;
20 (4) the acceptance of gifts and entertainment;
21 (5) compliance with applicable professional
22 standards;
23 (6) ethics training; and
24 (7) compliance with and enforcement of the ethics
25 policy.

26 (b) The ethics policy must include provisions applicable
27 to:

- 1 (1) members of the board;
2 (2) the commissioner;
3 (3) employees of the board; and
4 (4) any person who provides services to the board
5 relating to the management or investment of the funds designated
6 under Section 51.401.

7 (c) Not later than the 45th day before the date on which the
8 board intends to adopt a proposed ethics policy or an amendment to
9 or revision of an adopted ethics policy, the board shall submit a
10 copy of the proposed policy, amendment, or revision to the Texas
11 Ethics Commission and the state auditor for review and comments.
12 The board shall consider any comments from the commission or state
13 auditor before adopting the proposed policy.

14 (d) The provisions of the ethics policy that apply to a
15 person who provides services to the board relating to the
16 management or investment of the funds designated under Section
17 51.401 must be based on the Code of Ethics and the Standards of
18 Professional Conduct prescribed by the Association for Investment
19 Management and Research or other ethics standards adopted by
20 another appropriate professionally recognized entity.

21 (e) The board shall ensure that applicable provisions of the
22 ethics policy are included in any contract under which a person
23 provides services to the board relating to the management and
24 investment of the funds designated under Section 51.401.

25 Sec. 51.409. DISCLOSURE OF CONFLICTS OF INTEREST AND
26 FINANCES. (a) A member of the board, the commissioner, an employee
27 of the board, or a person who provides services to the board that

1 relate to the management or investment of the funds designated
2 under Section 51.401 who has a business, commercial, or other
3 relationship that could reasonably be expected to diminish the
4 person's independence of judgment in the performance of the
5 person's responsibilities relating to the management or investment
6 of the funds shall disclose the relationship in writing to the
7 board.

8 (b) The board or the board's designee shall, in the ethics
9 policy adopted under Section 51.408, define the kinds of
10 relationships that may create a possible conflict of interest.

11 (c) A person who is required to file a disclosure statement
12 under Subsection (a) shall refrain from giving advice or making
13 decisions about matters affected by the conflict of interest unless
14 the board, after consultation with the general counsel of the
15 board, expressly waives this prohibition. The board shall maintain
16 a written record of each waiver and the reasons for it. The board
17 may delegate the authority to waive prohibitions under this
18 subsection to one or more designated employees of the land office on
19 a vote of a majority of the members of the board at an open meeting
20 called and held in compliance with Chapter 551, Government Code.
21 The board shall have any order delegating authority to waive
22 prohibitions under this section entered into the minutes of the
23 meeting. The board may adopt criteria for designated employees to
24 use to determine the kinds of relationships that do not constitute a
25 material conflict of interest for purposes of this subsection.

26 (d) Each employee of the board who exercises significant
27 decision-making or fiduciary authority, as determined by the board,

1 shall file financial disclosure statements with a person designated
2 by the board. The content of a financial disclosure statement must
3 comply substantially with the requirements of Subchapter B, Chapter
4 572, Government Code. A statement must be filed not later than the
5 30th day after the date a person is employed in a significant
6 decision-making or fiduciary position and annually after
7 employment not later than April 30. The filing deadline may be
8 postponed by the board for not more than 60 days on written request
9 or for an additional period for good cause, as determined by the
10 chairman of the board. The board shall maintain a financial
11 disclosure statement for at least five years after the date of its
12 filing.

13 Sec. 51.410. REPORTS OF EXPENDITURES. A consultant,
14 advisor, broker, or other person providing services to the board
15 relating to the management and investment of the funds designated
16 under Section 51.401 shall file with the board regularly, as
17 determined by the board, a report that describes in detail any
18 expenditure of more than \$50 made by the person on behalf of:

- 19 (1) a member of the board;
20 (2) the commissioner; or
21 (3) an employee of the board.

22 Sec. 51.411. FORMS; PUBLIC INFORMATION. (a) The board
23 shall prescribe forms for:

- 24 (1) statements of possible conflicts of interest and
25 waivers of possible conflicts of interest under Section 51.409; and
26 (2) reports of expenditures under Section 51.410.

27 (b) A statement, waiver, or report described by Subsection

1 (a) is public information.

2 (c) The board shall designate an employee of the board to
3 act as custodian of statements, waivers, and reports described by
4 Subsection (a) for purposes of public disclosure.

5 Sec. 51.412. REPORTS TO LEGISLATURE. (a) Not later than
6 September 1 of each even-numbered year, the board shall submit to
7 the legislature a report that, specifically and in detail, assesses
8 the direct and indirect economic impact, as anticipated by the
9 board, of the investment of funds designated under Section 51.401
10 for deposit in the special fund account of the permanent school
11 fund. The board may not disclose information under this section
12 that is confidential under applicable state or federal law. The
13 report must include the following information:

14 (1) the total amount of money designated by Section
15 51.401 for deposit in the special fund account of the permanent
16 school fund that the board intends to invest;

17 (2) the rate of return the board expects to attain on
18 the investment;

19 (3) the amount of money the board expects to
20 distribute to the permanent school fund after making the
21 investments;

22 (4) the distribution of the board's investments by
23 county;

24 (5) the effect of the board's investments on the level
25 of employment, personal income, and capital investment in the
26 state; and

27 (6) any other information the board considers

1 necessary to include in the report.

2 (b) Not later than January 1 of each odd-numbered year, the
3 board shall submit to the legislature a report that assesses the
4 return and economic impact of the investments reported to the
5 legislature before the preceding regular legislative session.

6 SECTION 10. Sections 32.254 and 51.403, Natural Resources
7 Code, are repealed.

8 SECTION 11. This Act takes effect immediately if it
9 receives a vote of two-thirds of all the members elected to each
10 house, as provided by Section 39, Article III, Texas Constitution.
11 If this Act does not receive the vote necessary for immediate
12 effect, this Act takes effect September 1, 2005.

President of the Senate

Speaker of the House

I certify that H.B. No. 2217 was passed by the House on April 21, 2005, by the following vote: Yeas 145, Nays 0, 1 present, not voting; that the House refused to concur in Senate amendments to H.B. No. 2217 on May 27, 2005, and requested the appointment of a conference committee to consider the differences between the two houses; and that the House adopted the conference committee report on H.B. No. 2217 on May 29, 2005, by the following vote: Yeas 140, Nays 0, 2 present, not voting.

Chief Clerk of the House

H.B. No. 2217

I certify that H.B. No. 2217 was passed by the Senate, with amendments, on May 24, 2005, by the following vote: Yeas 31, Nays 0; at the request of the House, the Senate appointed a conference committee to consider the differences between the two houses; and that the Senate adopted the conference committee report on H.B. No. 2217 on May 29, 2005, by the following vote: Yeas 31, Nays 0.

Secretary of the Senate

APPROVED: _____

Date

Governor